

The instant matter arose out of the Division’s decision to enter into a brownfields agreement on March 31, 2016 with Enka Partners of Asheville, LLC (“Enka Partners”) for Project # 15011-11-11 (“the Brownfields Agreement”) pursuant to the Brownfields Property Reuse Act of 1997, N.C. Gen. Stat. §§ 130A-310.30, *et seq.* The Parties participated in an informal settlement conference on June 30, 2016, engaged in subsequent settlement discussions over the course of the following months, and participated in a formal court-ordered mediation on January, 27, 2017. Enka Partners, while not a party to the subject litigation, nor a signatory to this Settlement Agreement, also participated in many of the discussions. Based on information presented during the settlement conference, subsequent discussions, and the mediation, and in order to avoid the cost and delay of

litigation, the Division and MountainTrue have reached the following agreement:

1. This Settlement Agreement is a negotiated compromise between the Parties. Neither this Settlement Agreement nor any action on the part of the Parties hereto shall be deemed an admission with regard to the allegations raised in this matter.
2. The Division shall record or cause to be recorded an amended Notice of Brownfields Property and an amended plat with the Buncombe County Register of Deeds which shall correct an error that inaccurately described the amount of subject acreage in the original Notice of Brownfields Property. The amended Notice of Brownfields Property shall also:
 - indicate that subject Brownfields Property is comprised of approximately 29.88 acres;
 - indicate where and how the public can obtain a copy, in person and online, of the Redevelopment Plan required by paragraph 17.c. of the Brownfields Agreement; and
 - include an amended plat that shall reflect the associated corrected Brownfields Property boundaries and include any updated constituent sampling data exceeding applicable unrestricted use standards, as defined by N.C. Gen. Stat. § 130A-310.31(b)(5), available at the time the amended Notice and plat are recorded, including, but not limited to, sampling results from the June 27, 2016 Brownfields Assessment Report prepared by Altamont Environmental, Inc., any addenda to that report, and data

from the most recently available Semi-Annual Groundwater Monitoring Report prepared for BASF Corporation and submitted to the Solid Waste Section as part BASF's solid waste permitting requirements.

3. The Division consents to the inclusion of the following additional requirements which were mutually proposed and agreed upon by MountainTrue and Enka Partners. The Division has worked with the Prospective Developer to insure that the Redevelopment Plan required by paragraph 17.c. of the Brownfields Agreement included, at a minimum, the following language or substantially similar language:

“During construction of the Project, Site access will be restricted through signage, fencing and the presence of site personnel. Due to historical land use or the potential presence of impacted media, public access to several areas of the Site will be restricted after the Project is completed, as provided below:

- Unless the State, in accordance with federal law and regulation for the remediation of PCBs, approves the placement of clean fill over Basin 3 as shown on Figure 2 to the Redevelopment Plan, access will be restricted to that area with fencing and possibly signage;
- Access will be restricted, with fencing and possibly signage, to B-SW-5 (sometimes referred to as Tributary 2) as shown on Figure 2 to the Redevelopment Plan;
- Access will be restricted with fencing and signage to the area around Seep 1 as shown on Figure 2 to the Redevelopment Plan;
- Access will be restricted with fencing and possibly signage to that portion of the drainage feature running in a northerly direction along the west side of the Property to Hominy Creek (sometimes referred to as “Tributary 1”) where a carbon disulfide fire occurred in 2006;
- Access will be restricted with fencing and possibly signage to those portions of the drainage feature (sometimes referred to as Tributary 1) that are on the Brownfields Property; and
- Clean fill will be placed on the ‘Area of Additional Fill’ as shown on Figure 2 to the Redevelopment Plan.”

4. MountainTrue expressly waives its right to an administrative hearing on the Order. Within

ten (10) days of the full execution of this Settlement Agreement, MountainTrue shall file with the Office of Administrative Hearings a Notice of Dismissal with Prejudice, withdrawing its Petition for a Contested Case Hearing in *Mountain True. v. N.C. Department of Environmental Quality, Division of Waste Management*, 16 EHR 04101.

5. Nothing in this Settlement Agreement shall restrict the Division's authority to revise the Brownfields Agreement in accordance with its terms or to otherwise exercise its authority under Chapter 130A of the North Carolina General Statutes or any other applicable State or Federal rule or law.
6. MountainTrue and the Division agree that each shall bear its own costs related to any disputes covered by this Settlement Agreement. Neither MountainTrue nor the Division shall apply for attorney fees or costs under any rule or law, and neither shall be liable for any attorney fees, costs, or expenses incurred by the other.
7. MountainTrue and the Division agree that the consideration for this settlement is in the promises contained herein, that this Settlement Agreement contains the whole agreement between them, and that there are no understandings or agreements, verbal or otherwise, regarding this Settlement Agreement except as expressly set forth herein.
8. This Settlement Agreement is contractual in nature and not just a recitation of terms. The language of this Settlement Agreement shall be construed, enforced, and governed by the laws of the State of North Carolina.
9. Each provision of this Settlement Agreement is intended to be severable, and if any provision is held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or


unenforceability shall not affect or impair any other provision of this Settlement Agreement, but this Settlement Agreement shall be construed as if such invalid, illegal, or unenforceable provision had not been contained therein.

10. This Settlement Agreement shall be binding upon and inure to the benefit of the assigns, predecessors, successors, officers, agents, directors, employees, board, and administrators of MountainTrue and to the Division, its officials, managers, employees, assigns, predecessors, and successors.
11. This Agreement shall be binding upon the Parties upon execution by the undersigned. The Agreement becomes effective on the last date of the signatures of the undersigned.
12. The officer signing on behalf of MountainTrue hereby warrants that she is competent to enter into this Settlement Agreement, that she has authority to enter into this Settlement Agreement on behalf of MountainTrue, and that no court or tribunal of competent jurisdiction has found her to be incompetent or otherwise incapable of handling her business affairs or entering into a binding agreement or contract.
13. The undersigned representatives of the Parties hereby acknowledge that they have read this Settlement Agreement, conferred with their attorneys or had the opportunity to confer with an attorney, fully understand the contents of the Settlement Agreement, consent to the settlement of claims on the terms set forth herein, and do so in reliance upon their own judgment and, if represented by counsel, the advice of their attorneys, and not in reliance on any other representations or promises of the other party, its representatives, or its attorneys.

THE PARTIES ACKNOWLEDGE THAT EACH HAS CAREFULLY READ THIS ENTIRE AGREEMENT AND FULLY UNDERSTANDS ITS CONTENTS AND ITS LEGAL AND BINDING EFFECT. EACH PARTY FURTHER ACKNOWLEDGES THAT EACH MAKES A KNOWING AND VOLUNTARY WAIVER OF THEIR RIGHTS IN EXCHANGE FOR THE CONSIDERATION SPECIFIED IN THIS AGREEMENT.

IN WITNESS WHEREOF, this Settlement Agreement is executed in duplicate originals:

**FOR THE NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL QUALITY,
DIVISION OF WASTE MANAGEMENT:**



Michael Scott
Director
Division of Waste Management
North Carolina Department of Environmental Quality



Date

FOR MOUNTAINTRUE:



Julie Mayfield
Co-Executive Director
MountainTrue



Date

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing SETTLEMENT AGREEMENT has been served upon counsel for Respondent, by causing a copy thereof to be placed in the U.S. Postal Service with sufficient postage for delivery by first class mail and addressed as follows:

Daniel S. Hirschman
Special Deputy Attorney General
NC Department of Justice
Environmental Division
Post Office Box 629
Raleigh, North Carolina 27602-0629

This the 30th day of January, 2017.



Thomas Lodwick, N.C. State Bar No. 50151
Southern Environmental Law Center
22 S. Pack Square, Suite 700
Asheville, N.C. 28801
828-258-2023
tlodwick@selcnc.org